

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Proposing rule making related to relief from joint and several liability  
and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 38, “Administration,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 422.21 and 422.68.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 422.21.

*Purpose and Summary*

This proposed rule making updates rule 701—38.15(422) to reflect certain changes to Iowa Code section 422.21(7) and to provide taxpayers with additional clarity when seeking relief from joint and several liability for tax, penalty, and interest owed to the Department. The proposed changes to the rule describe who may qualify for relief from joint and several liability, the information applicants for relief must submit to the Department, the standard for evaluating whether an individual is eligible for relief, the administrative process for appealing a denial of relief, and the rights of the nonrequesting spouse or former spouse.

The amended rule provides that if an individual has sought and received a determination under Section 6015 of the Internal Revenue Code regarding relief from joint and several liability at the federal level, that individual is required to provide that documentation to the Department. In circumstances where the individual seeking relief from joint and several liability has not received a final determination from the Internal Revenue Service regarding the individual’s eligibility for relief at the federal level, the amended rule explains that the applicant bears the burden of showing that the individual is eligible for relief under Section 6015 of the Internal Revenue Code and describes the information the applicant must present to the Department to establish eligibility. The amended rule also clarifies the time period in which a request for relief from joint and several liability must be submitted to the Department and the process through which a taxpayer whose request for relief has been denied may appeal that decision.

Additionally, the amended rule addresses the rights of the nonrequesting spouse or former spouse. The amended rule outlines the Department’s role in notifying the nonrequesting spouse or former spouse and describes the information any such notice must contain. Finally, the amended rule articulates the process by which a nonrequesting spouse or former spouse may intervene before the Department in order to participate in the determination of whether relief from joint and several liability is appropriate and lists the information that must be contained in the nonrequesting spouse’s or former spouse’s notice of intervention.

*Fiscal Impact*

This rule making has no fiscal impact beyond the legislation it is intended to implement.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

### *Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 25, 2021. Comments should be directed to:

Kurt Konek  
Department of Revenue  
Hoover State Office Building  
P.O. Box 10547  
Des Moines, Iowa 50306  
Phone: 515.587.0440  
Email: [kurt.konek@iowa.gov](mailto:kurt.konek@iowa.gov)

### *Public Hearing*

If requested, a public hearing will be held on May 25, 2021, via videoconference call from 10:30 to 11:30 a.m. Persons who wish to participate in the videoconference call should contact Kurt Konek before 4:30 p.m. on May 24, 2021, to facilitate an orderly hearing. A video link and/or conference call number will be provided to participants prior to the hearing.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend rule 701—38.15(422) as follows:

**701—38.15(422) Relief of ~~innocent spouse~~ from joint and several liability under Iowa Code section 422.21(7) for substantial understatement of tax attributable to ~~other~~ nonrequesting spouse or former spouse.** Married or formerly married taxpayers are generally jointly and severally liable for the total tax, penalty, and interest from a joint return or from a return where the spouses file separately on the combined return form. However, pursuant to Iowa Code section 422.21(7), a married person who meets is eligible for relief under the criteria for an innocent spouse established in Section 6015 of the Internal Revenue Code may be relieved of liability for an understatement of Iowa tax that is attributable to erroneous items of the ~~other nonrequesting spouse or former spouse~~. For state income tax purposes, the requirements set forth in this rule shall control to the extent that they conflict with Section 6015 of the Internal Revenue Code.

**38.15(1) Filing status required for return with an innocent spouse relief from joint and several liability.** For state income tax purposes, a married or formerly married taxpayer filing a return with a spouse can may qualify as an innocent spouse for relief from joint and several liability under Iowa Code section 422.21(7) only if the taxpayers file taxpayer filed a joint return or file filed separately on the a combined return form. A married taxpayer who files a separate return that has been accepted by the state will not be eligible for innocent spouse status.

**38.15(2) Scope of relief for Iowa income tax purposes.** An understatement of the tax is the excess of the tax required to be shown over the tax actually shown on the return. An erroneous item is any item resulting in an understatement or deficiency in Iowa taxes to the extent that the item is omitted from, or improperly reported or characterized on, an Iowa tax return, including Iowa deductions and tax credits that would not be included on a federal return.

**38.15(3) ~~Presumption and burden of proof when requesting innocent spouse relief.~~**

~~a. —Presumption.~~ The department shall presume that a final determination letter or other document issued by the Internal Revenue Service approving a request for innocent spouse relief for the relevant tax years shows that the innocent spouse granted relief by that document qualifies for innocent spouse relief for Iowa income tax purposes for those tax years. If the person seeking innocent spouse relief does not provide the department with a final determination letter or other document issued by the Internal Revenue Service approving a request for innocent spouse relief within the time frame set forth in subrule 38.15(4), the department shall presume that the person seeking innocent spouse relief does not meet the criteria to qualify for innocent spouse relief for Iowa income tax purposes and shall deny the request. The burden is on the person seeking innocent spouse relief to rebut this presumption with other evidence.

~~b. —Request without Internal Revenue Service approval.~~ If the department denies a claim for innocent spouse relief, the person seeking innocent spouse relief may protest the department's determination under 701—Chapter 7. The department will evaluate the protest by applying the criteria set forth in Section 6015 of the Internal Revenue Code and the related regulations. The department will defer to federal court cases, letter rulings, and revenue rulings in interpreting Section 6015 of the Internal Revenue Code and the related regulations. The provisions of Sections 6015(c) and 6015(f) of the Internal Revenue Code regarding relief for separation of liabilities and equitable relief, respectively, are applicable for Iowa income tax purposes for tax years beginning on or after January 1, 2002. The burden is on the person seeking innocent spouse relief to show that the person meets the federal criteria for innocent spouse relief.

**38.15(3) Requirement to provide IRS determination or other evidence of eligibility.**

a. If the person seeking relief from joint and several liability under Iowa Code section 422.21(7) also applied for tax relief from the federal government under Section 6015 of the Internal Revenue Code and received a final determination letter or other document issued by the Internal Revenue Service in connection with relief requested under Section 6015 of the Internal Revenue Code, the person is required to provide the department with a copy of such letter or document within the time frame set forth in subrule 38.15(6). Failure to provide this required information, if it exists, will result in the denial of the request for relief from joint and several liability under Iowa Code section 422.21(7).

b. If the person seeking relief from joint and several liability under Iowa Code section 422.21(7) also applied for federal relief under Section 6015 of the Internal Revenue Code but did not receive a final determination letter or other document issued by the Internal Revenue Service in connection with the requested relief, the person must provide the department with other evidence to support the position that the taxpayer is eligible for relief under Iowa Code section 422.21(7).

c. If the person seeking relief under Iowa Code section 422.21(7) did not apply for federal relief under Section 6015 of the Internal Revenue Code, the person must submit a written statement to the department detailing the reason for not applying for relief under Section 6015 of the Internal Revenue Code as well as evidence to support the position that the taxpayer is eligible for relief under Iowa Code section 422.21(7).

**38.15(4) Burden of proof; evaluation of criteria listed under Section 6015 of the Internal Revenue Code.** The burden is on the person seeking relief from joint and several liability to show that the person is eligible for relief under Iowa Code section 422.21(7). In determining whether the person seeking relief from joint and several liability is eligible for relief under Iowa Code section 422.21(7), the department shall apply this rule and the relevant criteria set forth in Section 6015 of the Internal Revenue Code and the related federal regulations.

**38.15(5) Protesting a denied request for relief from joint and several liability.** If the department denies a claim for relief from joint and several liability under Iowa Code section 422.21(7), the person seeking relief may protest the department's determination under 701—Chapter 7. The department will

evaluate the protest by applying the criteria set forth in this rule and Section 6015 of the Internal Revenue Code and the related regulations. In protest proceedings, the burden is on the person seeking relief from joint and several liability to show that the person meets the criteria for relief under this rule and Section 6015 of the Internal Revenue Code.

**38.15(4) 38.15(6)** *Time period for requesting ~~innocent spouse~~ relief from joint and several liability.* For tax periods beginning on or after January 1, 2004, ~~innocent spouse~~ relief from joint and several liability must be requested within two years after the date ~~the department initiates collection action against the person claiming innocent spouse relief of the notice of assessment.~~ However, an ~~extended time period~~ applicant who fails to request meet this deadline may be granted equitable relief for ~~innocent spouses~~ if the applicant satisfies the criteria listed under Section 6015(f) of the Internal Revenue Code ~~can be granted under the provisions of and, if applicable,~~ Internal Revenue Service Notice 2011-70, which became effective July 25, 2011.

**38.15(7)** *Notice to nonrequesting spouse or former spouse.* On or before 60 days from the date the person seeking relief from joint and several liability files a request with the department, the department may notify the nonrequesting spouse or former spouse of the request for relief. The notice will advise the nonrequesting spouse or former spouse of the right to intervene by filing a notice of intervention with the department in accordance with subrules 38.15(8) and 38.15(9). The notice shall not include the current address or contact information of the spouse or former spouse requesting relief. The department will use the last-known address of the nonrequesting spouse when sending the notice.

**38.15(8)** *Intervention by nonrequesting spouse or former spouse.* If the nonrequesting spouse or former spouse desires to intervene, such individual shall file a notice of intervention with the department not later than 60 days after the date the notice of the request for relief from joint and several liability is sent by the department to the nonrequesting spouse or former spouse, unless the department directs otherwise.

**38.15(9)** *Contents of notice of intervention.*

*a.* A notice of intervention must be in the following format:

**DEPARTMENT OF REVENUE**

Name of Intervenor

**NOTICE OF  
INTERVENTION**

Address of Intervenor

Docket No. \_\_\_\_\_

*b.* A notice of intervention must contain all of the following, where applicable and known to the intervenor:

(1) The name, address, telephone number, and identification number of the taxpayer (i.e., social security number (SSN), federal identification number (FEIN), or individual tax identification number (ITIN) of the person who is requesting intervention);

(2) The docket number of the proceeding initiated by the person seeking relief from joint and several liability under Iowa Code section 422.21(7);

(3) A copy of a determination letter or other document, if any, issued by the Internal Revenue Service showing that the person seeking relief from joint and several liability under Section 6015 of the Internal Revenue Code has been granted or denied relief for the relevant tax years;

(4) A clear and concise statement of the grounds for intervention, all relevant facts, and the reasons why the intervenor agrees or disagrees with the person seeking relief from joint and several liability as to that person's entitlement to such relief;

(5) A citation to any specific statutes, rules, policies, decisions, or orders which may be relevant in the department's determination of the applicability of relief from joint and several liability to the person seeking such relief;

(6) Any information known to the petitioner relating to the department's treatment of similar cases;  
and

(7) The signature of the intervenor at the conclusion of the notice of intervention attesting to the accuracy and truthfulness of the information set forth in the notice of intervention.

This rule is intended to implement Iowa Code section 422.21 as amended by ~~2002 Iowa Acts, House File 2116~~ 2020 Iowa Acts, House File 2641.